IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7793 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

ODHADBHAI BHANUBHAI

Versus

STATE OF GUJARAT

---

Appearance:

MR GR SHAIKH for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2

---

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/06/2000

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution, the petitioner challenges the order dated 5.11.1993 (Annexure "A") passed by the Deputy Custodian (Evacuee Property) at Junagadh and also the order dated 27.7.1999 (Annexure "B") passed by the State Government dismissing the appeal of the petitioner and

confirming the order of the Deputy Custodian.

2. The short facts leading to filing of the petition are as under :-

Ghanchi Hussain Isa Bhadarka of village Prabhas Patan, Taluka Veraval, District Jungadh was the owner and occupant of the agricultural lands bearing Survey Nos. 403 and 747/1 admeasuring 3 Acres, 19 Gunthas and another parcel of land admeasuring 21 Gunthas. According to the petitioner, these agricultural lands were sold by Ghanchi Hussain Isa Bhadarka (hereinafter referred to as "the original owner") to Kardia Bhana and Hamir Lakha by registered sale deed dated 19.3.1951. The purchasers sold the lands and the petitioner claims to be the successor-in-title in respect of Survey No. 403 admeasuring A 3 - 19 Gs. It appears that in the year 1980, Ghanchi Hussain Isa Bhadarka came to India and transferred his house by registered sale deed dated 3.4.1980 and also filed an affidavit dated 3.4.1980 that he had not sold the agricultural lands in question. On that basis respondent No. 2 passed order dated 5.11.1993 holding the properties of Ghanchi Hussain Isa Bhadarka as evacuee property having vested in Union of India. The petitioner's appeal came to be dismissed. Hence, the present petition.

3. It is contended on behalf of the petitioner that the petitioner was not heard before passing the impugned order dated 5.11.1993. Reliance is placed on the decision of this Court in Jetha Kana vs. Managing Officer, Junagadh, 22 GLR 239. It is further submitted that in any view of the matter, in view of the provisions of Section 7A of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as "the Act"), the inquiry under the provisions of the Act whether the property in question was an evacuee property could not have been initiated after a period of six months from the commencement of the Administration of Evacuee Property (Amendment) Act, 1954 (hereinafter referred to as "the Amendment Act").

4. As far as the first contention about lack of opportunity of hearing is concerned, the order of the appellate authority indicates that the petitioner was given an opportunity of being heard.

5. As far as the second contention is concerned, nothing is produced by the respondents to show that the proceedings were initiated before expiry of six months from commencement of the Amendment Act of 1954. In fact,

from the fact that the authorities have claimed to have acted on the basis of the information contained in the affidavit dated 3.4.1980 of the original owner Ghanchi Hussain Isa Bhadarka, it is obvious that notice for declaring the property in question to be an evacuee property was not issued by the authorities within time. A perusal of the provisions of Section 7A of the Act of 1954 clearly indicates that the notice for declaring any property to be evacuee property has to be issued within six months from the date of coming into force of the Amendment Act of 1954.

In view of the aforesaid provisions, it is clear that no notice was issued by the authorities for declaring the property as an evacuee property within time. It appears that the authority had no power to initiate any proceeding after six months from the date of commencement of the Amendment Act, 1954.

The admitted fact is that the original owner who appears to have left for Pakistan visited India for the first time in the year 1980 and came out with a case that the property alleged to have been transferred by a registered sale deed in the year 1951 was not transferred by him. Now such a contention raised by the original owner could have been examined at the appropriate time. As the contention was raised after a period of twenty nine years from the date of the transaction and sixteen years after the date of commencement of the Amendment Act of 1954, by the gross delay in raising such a contention, the petitioner who is successor-in-title of the original purchasers are put to a disadvantage as they may not be able to gather all the evidence in their favour at this stage after many decades. In this view of the matter, there is considerable force in the contention of Mr Shaikh for the petitioner that initiation of proceedings for declaring the property in question to be an evacuee property was grossly time barred and beyond the period prescribed in the second proviso to Section 7A of the Act.

6. Of course, Mr KT Dave, learned AGP for the respondents has contended that the above contention was not raised before the authorities and has also referred to the provisions of Section 40 to contend that in any view of the matter, a transfer between 14.8.1947 and 7.5.1954 cannot be considered as effective in view of the provisions of Section 40 of the Act and that such transfer can become effective only if the transfer is confirmed by the custodian in accordance with the provisions of the Act or the case falls within one of the

exceptions contained in sub-section (2) of Section 40.

7. Although the contention appears to be prima facie attractive, the provisions of Section 40 can be invoked only if the property in question is declared to be an evacuee property. Now when the very declaration about the property being an evacuee property was hit by the provisions of Section 7A of the Act, the provisions of Section 40 cannot be invoked by the Government. Hence, the contention raised by the learned AGP cannot be accepted.

8. It is true that the contention under Section 7A may not have been raised before the authorities, but as laid down by a Division Bench of this Court in 22 GLR 239, a new contention may be permitted to be raised in a petition under Article 226 of the Constitution, more particularly when the authorities have themselves admitted that they initiated the proceedings after 1980 in view of the affidavit of the original owner.

9. It is clarified that this judgment does not purport to decide the dispute, if any, between Ghanchi Hussain Isa Bhadarka on the one hand and the successors-in-title of Kardia Bhana and Hamir Lakha on the other hand.

10. In view of the above discussion, the impugned order dated 5.11.1993 (Annexure "A") passed by the Collector & Deputy Custodian (Evacuee Property), Junagadh and the order dated 27.7.1999 (Annexure "B") passed by the Authorized Deputy Custodian General of Evacuee Property (Rehabilitation) in the State Government rejecting the petitioner's appeal are hereby set aside and the respondents are permanently restrained from treating the property being land admeasuring 3 Acres & 19 gunthas in Survey Nos. 403 in village Prabhas Patan, Tal. Veraval, District Jungadh as evacuee property.

11. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

June 13, 2000 (M.S. Shah, J.)
sundar/-